



**TESTIMONY OF CHRISTOPHER MELCHER
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OF RMI.NET, INC.
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
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Good afternoon. My name is Christopher Melcher, and I am Vice President and General Counsel for RMI.NET, Inc. RMI.NET is a Denver-based Internet service provider and web commerce company. I would like to thank the Federal Communications Commission and the Cable Services Bureau for providing me with the opportunity to join this discussion today on the proposed merger of the AT&T Corp. and MediaOne Group, Inc., And its impact on the issue of open access.

I would like to first tell you a little bit about RMI.NET. RMI.NET provides Internet access to more than 100,000 customers nationwide. Our Internet access services cover the full spectrum, from standard 56k dial-up Internet service to digital subscriber line service (or DSL) residential service, to high

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volume dedicated Internet access in the form of T-1's and DS3's for the business customers, and up to wholesale Internet access through our nationwide backbone. RMI.NET is a primary Internet access provider for rural America, including farms, small towns and isolated communities, throughout the Midwest and Western United States. AT&T, MediaOne, and the RBOC'S do not and will not serve these communities, whether through broadband or other forms of Internet access.

Currently, we provide access in 90 of the nation's top 100 market areas via a combination of points of presence that we own ourselves or lease from others.. RMI.NET recently purchased DataXchange Network, the sixth largest national Internet backbone provider, giving us the capability to provide access at speeds up to DS-3 in New York, Chicago, Atlanta, Washington, Dallas, San Francisco and Los Angeles. We also provide website hosting, and competitive local exchange, long distance, and Internet protocol voice service.

Our dual focus is serving our large residential and commercial Internet access customer base, and commerce-enabling small and medium-sized businesses. Both of these groups will be directly impacted by the merger and the ultimate decision on open access. Those who know us know that we

have been a strong and vocal supporter of open access, *particularly* in the western United States.

As you probably can tell by my use of the term “open access,” as opposed to the terms “forced access” by opponents of this concept, RMI.NET strongly supports opening up the nation’s cable systems to competition at the wholesale level. We believe this should be a major component and condition of any approval of the merger between AT&T and media one. The real issue here is not how high-speed cable compares to DSL or other forms of high-speed Internet access; the issue is really about how closing one form of high-speed access to competition affects the entire Internet community.

With the potential switch in support for open access by AOL – but not as yet announced – as a result of its proposed merger with Time Warner, it becomes imperative that the FCC take up the cause of open access for the nation’s **6,000-plus** smaller Internet service providers.

Let me address the reasons we support the open access, why open access should be a condition of this merger, and why the four most common myths perpetuated by opponents of the concept are false.

First, the cable industry will tell you open access **is not fair**. They **will tell** you that they have built or purchased their systems and have the right to control access. ~~In fact,~~ those cable systems were built with the support of the public, not only through franchise awards but through guaranteed consumer revenue in the form of predictable cable rates. The public therefore has a right to open access to that system. In reality, AT&T and the cable companies are trying to create an unlevel playing field by creating a closed system for telecommunications services that forces consumers into making difficult, non-competitive choices. It is only due to the hard work of this Commission and Congress that the incumbent local exchange carriers must now provide access to their systems under the Telecommunications Act of 1996. As you know this legislation was so strongly supported by AT&T, Media One, and many of the cable companies represented in this room here today. At the end of the day, we believe all companies that provide telecommunications services should play by the same rules.

Myth number two is that open access cannot technically or feasibly be accomplished. I have sat in hearing rooms and public forums with AT&T and cable industry representatives many times over the past six months and heard this argument time and time again. These, of course, were the same individuals who said that telephone competition would never work, who said

that the Internet ~~would~~ not work. Nothing seems ~~to work~~ until competition or the government says its will work. That argument in fact is now

- - irrelevant ~~according even~~ to AT&T itself. When AT&T announced submission of a joint letter to this Commission with Earthlink in December, AT&T admitted to the world that the question of open access to all Internet service providers on the cable system was no longer a question of if there should be access, but rather the question now was only when and under what terms. AT&T has publicly admitted that the critical issue will be how Open Access will be implemented. We believe strongly that history has taught us you cannot allow the owner of a monopoly technology to control the terms of access to that technology — this is why we saw the breakup of AT&T, and the Telecommunications Act of 1996.

A third myth espoused by the opposition is that requiring open access would hurt competition and the marketplace. What will hurt competition and the marketplace is to allow AT&T to control nearly 60 percent of the Broadband Access Market. If AOL/Time Warner are soon to control another 13 percent or more of the Broadband Access Market, the remaining participants will quickly be extinguished. Competition is not two or three companies controlling a product or service, it's allowing for over 6,000 companies to compete, such as we have with the Internet.

What is most strange to RMI.NET in this whole equation is **why** the cable companies would not want, or embrace, or even demand that **ISPs** sell their cable Internet ~~access~~ **product**. We are not asking for a free ride; we are asking for the right to purchase high-speed cable access at the wholesale level, and resell it at the retail level under competitive market conditions. While DSL and other high-speed Internet access services pass roughly 30% of the homes in America, cable and cable Broadband Internet access currently pass roughly 90% of the homes in America. Why would any company not want 6,000 agents out there selling its product? It has worked extremely well for a number of successful industries, including the wholesale voice carrier industry and the satellite television industry.

The final myth in this debate is that open access will hurt the consumer. This again is dead wrong. Right now, consumers are accessing the Internet through thousands of companies they've come to trust and rely on for quality service. If they want to stay with these smaller ISPs but move to cable access, they will suffer from having to pay twice to do so. Not opening up the nation's cable system to competition will force the consumer to make choices they don't want to make: it either will cost more and it will leave them with fewer options for providers. Open access will not hurt the consumer nearly as much as if we continue with a closed system.

We need open access to keep a level playing field, to continue the robust growth and development of the Internet, and to allow more than 6,000 smaller ISPs to stay competitive in the market. The cable industry has more than 60 million viewers nationwide, reaching 58.5 percent of the nation's households. We cannot afford to allow any activity that excludes ISPs from this marketplace. That is why we urge you to make open access a condition of this merger.

As a member of the open net coalition and as a smaller ISP, we recognize that we are now at a crucial time for the open access debate. We urge the FCC to make open access a condition not only for approval of the AT&T/MediaOne merger, but in the future a requirement for the entire cable industry regarding Broadband Internet Access.

My message to you is simple: the only way to have a competitive market for the Internet is to allow competitors equal access to all the technologies and wires leading to customers' homes. Open Access would only require minimal governmental oversight, and is the only sure way that competitive Internet Access will flourish. The opposite course will almost certainly lead to Broadband Internet Access monopoly in the cable technology arena, and threaten the health and growth of the Internet itself. It took us some 36 years to break up the telephone monopoly; in this day and age of a rapidly

expanding, competitive and changing telecommunications and Internet marketplace, we cannot afford the luxury of that much time.

Thank you.